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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,751	12/30/2000	Alan Rudnick	38021.010000	9595
54353 7590 02/15/2007 MANUEL VALCACEL c/o GREENBERG TRAURIG, P.A. 1221 BRICKELL AVENUE MIAMI, FL 33131			EXAMINER JEANTY, ROMAIN	
			ART UNIT	PAPER NUMBER
			3623	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/15/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/752,751	Applicant(s) RUDNICK, ALAN	
	Examiner Romain Jeanty	Art Unit 3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-7 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3623

DETAILED ACTION

1. This Office Action is in response to the communication received on November 2, 2006. Claims 1-3, 5-7 are pending in the application.

Response to Arguments

2. Applicant's arguments with respect to claims 1-3, 5-7 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is a method claim which recites "...providing means for....". It is unclear as to what "means for" means in the claim. Applicant is suggested that applicant remove the words "means for" in the claim in order to overcome the 112 second rejection.

Claims 5 and 6 depend from claim 3; therefore claims 5 and 6 are similarly rejected under 35 U.S.C. 112 second paragraph.

Claim Rejections - 35 USC § 103

Art Unit: 3623

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giovannoli (US 5,842,178) over Peterson et al (U.S. Patent No. 6,324,522).

As per claims 1, 3 and 7, Giovannoli teaches a system for buyers and sellers of goods/services to engage in commerce (column 2, lines 39-45, where the system consists of a network that can be operated over the internet which allows communication between buyers and sellers for goods/services) comprising a processing unit, system software for controlling the processing unit, storage means containing one or more databases with information regarding buyers and sellers and the goods/services available (column 2, lines 56-66, where the system includes means for storing the identification of its network members (ie buyers and sellers) which constitutes a database since it stores information. It also has at least one processing unit and software for controlling the processing unit. See also Figure 4 which has a product database), one or more servers providing internet-based access and use of said system (column 2, line 44 where the internet is used with the system), means for buyers of goods/services to select between at least one sales channel for buyers to purchase goods/services interacting directly with said sellers and at least one sales channel for buyers to purchase goods/services without direct interaction with the sellers via an intermediary that acquires the goods/services from the sellers and resells to buyers (column 3, lines 2-8, where the system can directly send communications from sellers to buyers or indirectly by using the computerized quotation system. See also

Art Unit: 3623

column 5, lines 44-54, where the software can contact the quotation system over the internet via FTP and RFQ data could be e-mailed directly to the buyer which would constitute a direct channel or as noted in column 6, lines 9-12, the quotes are provided to the buyers by means of the quotation system which would constitute an indirect channel.), means for buyers to transmit a request for quote to the system (column 2, line 41 where the system processes requests for quotation, which would come from the buyer), means for system to transmit request for quote to sellers (See Figure 2a where the system receives the request for quote from the buyer and then the quotation system processes it by sending it to the sellers that meet the filter criteria), means for sellers to transmit quotes to buyers in response to requests for same (See Figure 2a and 2b, where the sellers then respond to the request for quote by providing pricing and other information to the quotation system which is sent to the respective buyer that submitted the request).

Giovannoli fails to explicitly disclose sellers to upload their goods inventory data and respond to requests for quotation. Peterson et al in the same field of endeavor, discloses the an inventory control system for allowing a seller to upload goods inventory data to a central database (col. 14, lines 24-36). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Giavannoli to include uploading the seller inventory goods data to a central database as evidenced by Peterson et al in order to efficiently transfer inventory between parties according to prearranged terms.

Furthermore, applicant has amended the claims to recite "thereby allowing said buyer to evaluate which of said sales channels provides a better purchase terms for the goods/services". However, the examiner points out that limitation recites the

Art Unit: 3623

aforementioned limitation only in terms of intended use (to allowing said buyer to evaluate which of said sales channels provides a better purchase terms for the goods/services.) This intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

As per claims 2 and 5, Giovannoli teaches means for buyers to purchase goods/services by linking directly to seller ordering systems (column 8, lines 45-52, where the software would contact the vendor's product database and retrieve pricing and other information to respond to the RFQ. The quotation system provides the linking means from the buyer to the seller's system.).

As per claim 6, Giovannoli teaches selecting appropriate sellers to receive requests for quote based on filter conditions provided by buyers or sellers (See column 2, lines 65-67 and column 3, lines 1-2, where the system has filters which control which vendors receive the requests for quote as set by the buyer or seller. See also Figure 2a where the system receives the request for quote from the buyer and then the quotation system processes it by sending it to the sellers that meet the filter criteria).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Shavit et al (U.S. Patent No. 4,799,156) discloses an interactive market system for buyers to purchase product from sellers and intermediary.

b. Shkedy (U.S. Patent No. 6,260,024) discloses a method for using a computer acting as an intermediary to facilitate a transaction between a plurality of buyers and at least one seller.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Linda Krisciunas whose telephone number is 571-272-

Art Unit: 3623

6931. The examiner can normally be reached on Monday through Friday, 6:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 22, 2007

Romain Jemty
Primary Examiner
Art Unit 3623